

Schedule of Audit Findings

Pacific Conservation District Pacific County January 1, 1997 through December 31, 1997

1. A Pacific Conservation District Associate Supervisor violated state law on conflict of interest.

Description of Condition

Conservation District Background Washington State Law defines a conservation district as a local government. Conservation districts were organized for a variety of purposes, but their main activity is the conservation of the state's land and natural resources.

The governing body of a conservation district is made up of three supervisors elected by district voters. District supervisors may appoint associate supervisors to perform duties on their behalf. State law defines both district supervisors and associate supervisors as municipal officers.

An Associate Supervisor of the Pacific Conservation District assisted the District in preparing a grant application to the Department of Natural Resources for a Jobs for the Environment grant in the amount of \$300,000 for the Salmon Habitat Restoration Partnership Project. He also assisted with the preparation of the bid package. When the grant project was let for bid, the Associate Supervisor was the only bidder and was awarded the bid.

The Associate Supervisor recently resigned from his position with the District, but is still working on the grant project.

Cause of Condition

District officials lacked an understanding of conflict of interest laws.

District officials said they were not aware that holding a position as an associate supervisor would prohibit that individual from bidding on the project.

Effect of Condition

State law regarding conflict of interest was violated.

The Associate Supervisor used his position to be awarded the grant project.

Recommendations

All municipal officers should review and comply with state laws on conflict of interest.

We will refer the violation to the County Prosecutor's Office to determine if further action should be taken.

District's Response

We agree that District officials lacked an understanding of conflict of interest laws. However, we disagree that the associate supervisor, Allen Lebovitz, had a conflict of interest.

*We agree that an associate supervisor **could** be considered a municipal officer. However, all associate supervisors at the District have absolutely no voting rights at our monthly Board meetings. Associate supervisors can vote at the annual state convention of the Washington State Association of Conservation Districts, however, Mr. Lebovitz has never attended such a convention. A review of all minutes since Mr. Lebovitz first attended District meetings will reveal that he has never voted on any motion, nor has he participated in any subcommittee meeting. He is an Associate Supervisor in title only.*

Secondly, Mr. Lebovitz did not directly participate in the preparation of the bid packet. The packet was prepared solely by District staff. The bid packet did contain parts of the original proposal that Mr. Lebovitz prepared. We do acknowledge that indirectly, his work was part of the bid packet.

Thirdly, we strongly feel the bid process met state standards. How can Mr. Lebovitz be held accountable for the fact that he was the sole bidder? Neither he nor District staff prevented others from bidding on the project. The District does not believe that Mr. Lebovitz used his position to be awarded the project.

In the future, the District will not allow associate supervisors to participate in any activity as stated in RCW 42.23.030 and RCW 42.23.070 (1).

It has come to our attention that Mr. Lebovitz has entered into another contract with the District while being an Associate Supervisor. We want to share that information with you at your earliest convenience.

Auditor's Remarks

We appreciate the District's response to our recommendations. However, we must reaffirm our finding based on a memorandum from the state Attorney General's Office that specifically addresses this issue.

The memorandum states that:

- Under RCW 89.08.220, a conservation district is a governmental subdivision of the state, and as such, its officers are considered municipal officers. The definition of municipal officer includes all elected and appointed officers together with all deputies and assistants who exercise the powers and functions of a municipal officer.
- Under RCW 42.23.020, an associate supervisor of a conservation district is considered to be a municipal officer.

Under RCW 42.23.030, an associate supervisor of a conservation district who prepares the bid documents for a project, and who then successfully bids on the project, has a beneficial interest in the contract.

The Attorney General's Office memorandum was provided to the District.

Applicable Laws and Regulations

The *Revised Code of Washington* (RCW) outlines the conflict of interest provisions as follows:

RCW 42.23.030 states:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

RCW 42.23.070 (1) states:

No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.